* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on February 20,2007
Delivered on February 26,2007

\+ CRL.M.C.837/2005

GULZARI LAL KALRA ..... Petitioner
Through Mr. Manish Gandhi, Advocate

versus

N.K. KATHURIA & ANR. ..... Respondents
Through Mr. Arvind Gupta , Advocate
Mr. Pawan Sharma, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S.Ravindra Bhat

1. The petitioner seeks quashing of criminal proceedings, in the present petition under Section 482, Code of Criminal Procedure.

2. The respondent (hereafter called "the complainant") preferred the criminal proceedings, alleging that he and the petitioner were friends, that the petitioner had been approaching and requesting the complainant for a loan. The complainant claims to have been advancing loans as requested, from time to time. It was

claimed that the petitioner owed to the Complainant a sum of Rs.1,87,200.00 (Rupees One Lakh Eighty Seven Thousand Two Hundred Only) being the amount borrowed by him. It was alleged in February 1998, when the complainant was in need of money, he asked the petitioner to return the amount of Rs.1,87,200.00. The petitioner, in repayment of the amounts due, issued cheques bearing No.703711 dated 05.02.1998 for Rs.87,200.00 drawn on Punjab and Sind Bank, Malka Ganj, Delhi and another cheque No.476284 dated 07.02.1998 for Rs.1,00,000.00 drawn on Punjab National Bank, Roshanara Road, Delhi with an assurance that the cheques would be honoured on presentation.

3. It is claimed that on 05.02.1998, the petitioner approached the Complainant and requested that he had not been able to arrange for the amount of Rs.1,87,200.00 and requested for grant of time of around a month. It was also alleged that in the first week of March, 1998, the petitioner asked the complainant to present the cheque in such a way that it could be presented to the bankers of the petitioner on 9.03.1998, with an assurance that the cheque would be honoured on presentation.

4. The cheques were presented by the Complainant to his bankers i.e. Bank of India, Janpath, New Delhi but were returned dishonoured. The cheque for

Rs.87,200.00 drawn on Punjab and Sind Bank, Malka Ganj, Delhi was returned with the remark "exceeds arrangement" while the other cheque for Rs.1,00,000.00 drawn on Punjab National Bank, Roshanara Road, Delhi was returned with the remark "Insufficient Funds". The complainant through his Advocate's notice dated March 24, 1998 demanded re-payment of the cheque amounts. The complainant alleged that despite receipt, yet, the petitioner failed and neglected, to reply to the notice or to pay the sum of Rs.1,87,200.00 (Rupees One Lakh Eighty Seven Thousand Two Hundred only), within the stipulated 15 days. Upon these allegations, the complainant instituted a criminal complaint alleging offences under Sections 138 and 142, Negotiable Instruments Act, 1981. The summoning order, and continuance of proceedings have been impugned in this petition.

5. Learned counsel for the petitioner raised three contentions. It was urged, firstly that the Act is a self contained one, and in so far as it prescribes the period within which the complaint has to be filed, Section 142 would prevail; however, as regards other matters of procedure, the Code of Criminal Procedure would apply. The trial court, in the submission of the counsel, could not have taken cognizance on 7-8-1999, i.e much beyond the period of limitation prescribed under Section 468 of the Code. The second submission made was that the notice in question claimed an amount larger than the sum of the two cheques; therefore, it could not

be construed as a notice under Section 138. Consequently, the complaint, and the proceedings, were without jurisdiction. It was lastly urged that the notice was not received by the petitioner.

6. Reliance was placed upon observations in a judgment of the Supreme Court, reported as *Krishna Pillai -vs- T.A. Rajendran & others* 1990 (Supp) SCC 121 to say that Section 468 of the Code creates a bar upon Courts taking cognizance after expiry of the stipulated period. The Court in that case, no doubt, went by the textual meaning of taking cognizance, and held that filing did not mean taking cognizance. However, the Court has explained, in recent decisions, as to when cognizance is taken, of an offence, will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by "taking cognizance" (Ref *Mohammed Yusuf -vs- Afaque Jahan* 2006(1)-SCC -627).

7. In *Bharat Damodar Kale -vs- State of AP* 2003 (8) SCC 559, precisely the same issue, as is sought to be argued here, on the question of limitation, in taking cognizance, even though the complaint was filed in time, arose. The Court held as follows:

"a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of-course prohibits the Court from taking cognizance of an offence where the complaint is filed before the Court after the expiry of the period mentioned in the said Chapter. This is clear from S. 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing the period of limitation, time taken during which the case was being diligently prosecuted in another Court or in appeal or in revision against the offender should be excluded. The said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the Court was closed will also have to be excluded. All these provisions indicate that the Court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the Court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of Court. The legal phrase "actus curiae neminem gravabit" which means an act of the Court shall prejudice no man, or

> *by a delay on the part of the Court neither party should suffer, also supports the view that the Legislature could not have intended to put a period of limitation on the act of the Court of taking cognizance of an offence so as to defeat the case of the complainant."*

A similar view had been indicated, in *Pallav Seth -vs- Custodian & Others* 2001 (7) SCC 549, where the Supreme Court held that a non-obstante provision of Section 20 Contempt of Courts Act, (identically phrased as Section 468, Cr. PC) could not prevent the court from initiating action, as long as the litigant filed the case within the time stipulated in law. In view of the above decisions, the first contention of the petitioner has to fail; it is rejected as without merits.

8. The second question pertains to whether the notice issued by the complainant cannot be said to conform to Section 138 of the Act. Clause (b) of proviso to Section 138 requires the payee of the cheque to demand the payment of the cheque by giving a written notice to the drawer of the cheque *"within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid"* : clause (c) to the same proviso further provides that in case the drawer of the cheque fails to make payment of the amount of the cheque to the payee *"within fifteen days of the receipt of the said notice"* the drawer of the cheque subject to the fulfilment of other conditions laid down in the main clause as well as in clause (a) an offence punishable, stands committed by the drawer of the

cheque. In the present case, a careful reading of the notice issued by the complainant reveals that the demand made was for Rs. 1,87, 200/- in addition, 2.5% interest per month, with notice fee was claimed. In my opinion, the dominant intention expressed in the notice was to claim the amount of the cheque. Other references were merely incidental. Therefore the second argument of the petitioner is without merit.

9. As regards the last contention, i.e that the petitioner did not receive the notice, and thus the complaint was not maintainable, I am of the considered opinion that it cannot be examined in the present proceedings under Section 482, being a pure issue of fact, which has to be considered on the rival contentions of parties.

10. In the light of the above conclusions, I am of the opinion that this petition is

lacking in merits; it is accordingly dismissed without any order as to costs.

February 26, 2007 (S. RAVINDRA BHAT)
JUDGE